IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1894

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

WINDSOR POWER HOUSE COAL COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT WINDSOR POWER HOUSE COAL COMPANY IN SUPPORT

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Windsor Power House Coal Company (herein called "Windsor Power"), respondent herein, joins Petitioners in urging that the Court review the decision of the lower court. Windsor Power joins in the Petition for a Writ because Windsor Power strongly believes that the Court must, in the interest of all parties, clarify and distinguish the impact and application of its recent decision in *Buffalo Forge,* — U.S. —, 96 S.Ct. 3141 (1976), on the "wildcat" strikes in the coal industry which have been a common occurrence and have escalated disastrously since the *Buffalo Forge* decision.

Windsor Power submits that it is essential to the prevention of chaos in the coal industry that the Court, using this case as the most convenient vehicle, quickly lay to rest the opinion, now prevalent among members of the United Mine Workers of America (herein called "UMWA"), and some lower courts, that *Buffalo Forge* legalized wildcat strikes and gave any dissident minority group of coal miners a license to shut down the coal mines at will over disputes which are clearly arbitrable under the National Bituminous Coal Wage Agreement.

The coal miners, their legal counsel, and even some U.S. District Court Judges, have overreacted to *Buffalo Forge* and have, in effect, construed it as overruling *Boys Markets,* 398 U.S. 235 (1970), or at least to have so severely restricted that decision as to make it almost totally inoperative.

Windsor Power submits that there are significant and controlling differences between the type of sympathy strike which the Court held unenjoinable in *Buffalo Forge* and the "wildcat" strikes in the coal industry which are typified by this case. Windsor Power believes that the Court, upon examination and comparison of the two different situations presented, will agree that *Boys Markets* is still applicable and available as a remedy against wildcat strikes of the kind prevalent in the coal industry.

The hard truth is that, unless the law provides a judicial remedy, the coal industry, the coal miners' union, the coal miners and their families, the miners and pensioners and widows' pension and health and medical funds, and the public at large will be put at the mercy of small bands of willful men who by the use of roving pickets can shut down the entire coal industry and keep it down so long as it suits their purposes.

Litigation arising out of a current widespread wildcat strike is in progress, but is not ripe for submission to this Court. This Windsor Power case, arising out of an earlier strike, therefore, is the only case known to Windsor Power which can provide a test case for most expeditiously determining the state of the law as it applies to recurring and widespread wildcat strikes in the coal industry.

QUESTION PRESENTED

Windsor Power does not agree entirely with Petitioners' statement of the question presented. Windsor Power submits that the question presented is:

Do the federal courts have jurisdiction under Section 301 of the Labor-Management Act and under *Boys Markets* and *Buffalo Forge* to enjoin members of a local union from refusing to work where "stranger" pickets appeared at a mine of Windsor Power and:

1. Where the "stranger" pickets were not identified, but the picketing was occasioned by an arbitrable dispute between another coal company and other local unions of the UMWA;

2. Where the strikers did not claim they were striking out of "sympathy" for the other locals, but rather claimed that they did not know who the pickets were or why they were picketing and also claimed that this failure to work was caused by "fear of violence and personal harm" (Petition for Certiorari, p. 5); and

3. Where all of the companies and all of the local unions and UMWA members involved were mem-

bers of a single, multi-employer unit and parties to a single multi-employer agreement between the Bituminous Coal Operators' Association (herein "BCOA") and the UMWA containing an unusually broad arbitration clause and, therefore, all union members had a direct interest in the outcome of the dispute.

STATEMENT OF THE CASE

On March 18, 1975, "roving", "stranger" pickets showed up at the Beech Bottom Mine of Windsor Power House Coal Company. Work at the mine stopped when the members of the local union refused to work in the face of these "stranger" pickets.

The pickets were never identified, but the lower court found that the picketing was occasioned by a labor dispute between another coal company and other locals of the UMWA. One union witness testified that he thought that the pickets were college students. The company at which the dispute arose was North American Coal Corporation (herein called "North American"), and the dispute was over the interpretation of the "Helper" provision in the 1974 National Bituminous Coal Wage Agreement. Both Windsor Power and North American are parties to the National Agreement, as are all local unions involved. The "Helper" clause applied to all BCOA companies, all local unions, and all UMWA members. This is so because the National Agreement is made by the International Union on behalf of all its members. The employees at the Beach Bottom Mine at no time claimed any sympathy with the pickets. They denied knowing the pickets' identity, and claimed only that they refrained from work in fear of violence and physical harm.

The Federal District Court in Northern West Virginia issued a temporary restraining order and later a preliminary injunction. The union parties refused to obey the injunction and were held in contempt. The case was appealed by the union to the Fourth Circuit Court of Appeals which sustained the preliminary injunction, but refused to review the contempt finding on the ground that it was civil, not criminal, and, therefore, was not final and reviewable at that stage.

The UMWA has petitioned for a Writ of Certiorari. Windsor Power joins in this Petition.

REASONS FOR GRANTING THE WRIT

A. The Writ Should Be Granted Because the Issue Is One of Great National Importance and There Is a Clear and Present Necessity to Clarify the Law Applicable to Wildcat Strikes in the Industry.

The coal industry has long been plagued by wildcat strikes, but with the advent of the *Boys Markets* decision in 1970, the Court made available a judicial remedy that was utilized by the courts to keep these recurring illegal strikes somewhat in check, and at least to impede their spread and to shorten their lives.

Buffalo Forge was decided on July 6, 1976. Almost immediately thereafter, a rash of wildcat strikes broke out in the coal industry, idling more than 100,000 miners. This strike is still in progress. These wildcats will recur, and with increasing frequency, unless and until they are brought within the reach of the processes of law.

The National Agreement contains, as this Court noted in *Gateway Coal,* 414 U.S. 368 (1974), an unusually broad grievance-arbitration clause which can be

invoked when there is any dispute over the meaning of the contract or over "any local trouble of any kind".

That grievance-arbitration procedure is being subverted and undermined on a massive scale. We respectfully suggest that the Court should reaffirm its support of the peaceful settlement of disputes by the arbitration procedures which were mutually agreed upon by the parties, and thus help restore orderly processes rather than the law of the jungle to the coal fields.

B. Boys Markets and Not Buffalo Forge Governs the Typical Wildcat Strike in the Coal Industry.

The wildcat strike in *Windsor Power* bears no resemblance to the sympathy strike in *Buffalo Forge*. There are several controlling differences between this case and *Buffalo Forge*.

1. The underlying dispute here, unlike Buffalo Forge, was arbitrable.

In *Buffalo Forge,* one local union was engaged in a legal, primary strike and in picketing of the employer over the negotiation of a labor agreement. A sister local of the same International, in a separate bargaining unit with a separate agreement, at the direction of the International went out on strike in sympathy with the striking union. The primary strike and picketing by the first local was lawful because it was in pursuance of a negotiated agreement. There was no underlying arbitrable dispute of any kind. Therefore, the Court majority in *Buffalo Forge* held that *Boys Markets* could not apply because there was no arbitrable dispute except the question of the legality of the sympathy strike itself. The sympathy strike could not have "the purpose nor the effect of denying or evading an obligation

to arbitrate" because the "underlying issue" in *Buffalo Forge* was not arbitrable. The "underlying issue" was, of course, the terms of a new agreement between the first union and the employer, and this dispute was clearly not arbitrable.

In this *Windsor Power* case, as in the typical wildcat strike in the coal industry, the original strike (at North American Coal over the interpretation of the "Helper" clause of the National Agreement) was clearly arbitrable, and, therefore, the "underlying issue" was an arbitrable one. As such, it was enjoinable under *Boys Markets,* and *Buffalo Forge* does not change that. The "stranger" picketing was merely an extension of, and in aid of, the original, precipitating, enjoinable strike. Participation in such an enjoinable strike must itself be enjoinable to avoid a totally unacceptable and illogical result.

If *Windsor Power* should be held to be governed by *Buffalo Forge,* it would mean that those who strike over an arbitrable grievance (strikers at North American Coal) could be enjoined under *Boys Markets,* but those locals who strike in alleged "sympathy" with North American's enjoinable strike would be free of judicial restraint. The law could not countenance such an illogical and inequitable distinction.

2. This is not a sympathy strike.

Buffalo Forge presented a case of a classic sympathy strike. There were two sister locals representing two separate employee bargaining units under two separate agreements, one in being and the other being negotiated. One local was engaged in a legal strike. The International Union directed the other local to cease work in sympathy—to lend moral and demonstrable

support to the legal, primary strike. The second local did so knowingly and purposely to show its sympathy and support. Here, the strike was unauthorized by the International, and the local union and its members at the Beech Bottom Mine did not, so far as the record shows, strike in sympathy with another UMWA local or anyone else. The employees at the Beech Bottom Mine did not know what the dispute was about or try to find out. The pickets did not identify themselves and were not identified.

In order to be a sympathy strike, the "sympathy" strikers must know who the original strikers are and what their cause is, and must be in sympathy with it. Here none of these elements were present. This alone make *Buffalo Forge* inapplicable.

The strikers, or some of them, stated they ceased work out of fear of violence or physical harm. If that were the case, this would in itself have presented an arbitrable safety dispute under the *Gateway Coal* decision. But, the crucial point made here is that this was not a sympathy strike, and for that reason alone *Buffalo Forge* cannot be said to be controlling.

3. All local unions here involved had a common and direct interest in the underlying dispute.

Apart from the reasons stated above, there is another basic difference between this case and that of *Buffalo Forge*. Even if we assume that the Beech Bottom local was indeed striking in support of the North American locals over the "Helper" issue, the Beech Bottom strike cannot qualify as a protected sympathy strike. This is because the Beech Bottom local had a common and direct interest, not merely a sympathetic concern, with the underlying arbitrable dispute. As

Justice Stevens said in *Buffalo Forge,* "... a sympathy strike does not directly further the economic interests of the members of the striking local or contribute to the resolution of any dispute between that local, or its members and the employer." Slip Opinion, p. 17. Therefore, in the true sympathy strike, the sympathetic union has no direct interest in the underlying dispute.

In *United Mine Workers,* 179 NLRB 479 (1969), the NLRB specifically held that BCOA *"constitutes a single multi-employer bargaining unit."*

Therefore, Windsor Power and North American, and all other members of BCOA, are a part of a single, multi-employer bargaining unit. The employers in this single unit have a single national agreement negotiated between BCOA and the UMWA, which is binding alike on all the employers, all the local unions and all the UMWA members employed by BCOA companies. All locals and all Union members have a common interest in the national agreement and in its interpretation and enforcement. There is thus a complete parity and unity of interest in the terms of the national agreement and in its uniform interpretation.

Therefore, unlike *Buffalo Forge* all of the UMWA members engaged in the wildcat strike stemming from the original arbitrable dispute were part of the same indivisible bargaining unit in which the dispute arose. The strike by the Beech Bottom local was not a sympathy strike over issues outside its bargaining relationship. It was a strike engaged in jointly with all other striking UMWA locals within the single bargaining unit over the meaning of a common provision of their common national agreement. Therefore, all had a

common and direct interest in the outcome of the dispute, whether resolved through arbitration or by the use of economic force. Claiming to be striking in so-called "sympathy" under these circumstances is a misnomer tending to obscure the direct interest of all UMWA members in the *underlying* arbitrable dispute. The act of the Beech Bottom local in joining in the strike was, therefore, in contravention of the "driving force" behind *Boys Markets*—"the implementation of the strong Congressional preference for the private disputes settlement mechanisms agreed upon by the parties." The spreading of the strike simply escalated the assault on the arbitration process. It was, therefore, a direct strike over an arbitrable dispute which interfered with and frustrated the arbitration process by which the parties had agreed to settle disputes. *Buffalo Forge,* Slip Opinion, p. 9. This is a classic *Boys Markets,* not a *Buffalo Forge* case.

CONCLUSION

Because of the question being raised as to the application of *Buffalo Forge* to wildcat strikes in the coal industry, we join in urging the Court to clarify the law on this issue which is one of national importance, the clarification of which is one of utmost urgency.

Respectfully submitted,

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